UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

USA,	)	
	)	
Plaintiff,	)	
vs.	)	
	)	
CANNON, MAURICE,	)	CAUSE NO. IP05-0052-CR-01-T/F
	)	
Defendant.	)	

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
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UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	IP 05-52-CR-01-T/F
	)	
MAURICE CANNON,	)	
	)	
Defendant.	)	

ENTRY ON DEFENDANT'S MOTION TO SUPPRESS EVIDENCE (Docket No. 67)

On April 5, 2005, a grand jury issued a one-count indictment alleging that the Defendant, Maurice Cannon, having previously been convicted of a crime punishable for a term exceeding one year, did knowingly possess firearms in violation of 18 U.S.C. § 922(g)(1). This cause comes before the court on the Defendant's motion to suppress evidence allegedly seized from a vehicle in violation of the Fourth Amendment. The Government opposes the motion. Having reviewed the parties' briefs and heard evidence and oral argument on the motion, the court now rules as follows:

I. FINDINGS OF FACT[1]

[1] Any portion of this discussion labeled as a finding of fact that would more appropriately be considered a conclusion of law is so deemed, and vice versa regarding the subsequent section. Similarly, any statement contained in this entry that is actually a mixed determination of fact and law is just that, regardless of how it is labeled. The court bases its findings of fact on the preponderance of the evidence submitted by the parties.

The vehicle searched was a blue 1992 Oldsmobile with license plate number 49Z9343 (the "Vehicle"). Although it was registered to Toya (Webb) Cannon, the Defendant shared some ownership interest in the Vehicle. Toya (Webb) Cannon and the Defendant shared a household and were engaged to be married at the time (and have since married). The Defendant helped make payments for the car, had his own set of keys to the car, and had permission to drive it when needed.

On December 8, 2004, at approximately 4:02 P.M.,[2] the Vehicle was being driven eastbound on 38th Street in Indianapolis, Indiana. No passengers besides the driver were in the Vehicle at the time. As the Vehicle approached the intersection of 38th Street and Layman Avenue, Officer Carrier observed the Vehicle make an illegal lane change and cut off another vehicle. Officer Carrier turned on his lights and siren to perform a traffic stop of the Vehicle. The Vehicle abruptly turned northbound on Audubon Road and pulled into a private driveway at 3831 North Audubon Road. Officer Carrier stopped his car in the street behind the Vehicle. The African-American male driver exited the Vehicle. At the suppression hearing, Officer Carrier identified the driver of the Vehicle as the Defendant. Officer Carrier ordered the suspected driver to stop and return to the Vehicle. The suspect looked at Officer Carrier, said nothing, and began running northeast away from the Vehicle, in between houses. Officer Carrier called for backup and began pursuit of the suspect on foot. At 4:04 P.M., Officer Carrier issued a description of the suspect over the radio, indicating that he was wearing a blue

[2] All times herein are approximations.

shirt,[3] blue stocking cap, brown pants, and that he was between houses south of 39th Street. (Def. Ex. C.) Within minutes, multiple officers arrived to form a rough perimeter around the general area and to help apprehend the suspect.

Officer Carrier was unable to apprehend the suspect on foot as he was not as nimble climbing fences as the suspect, so he returned to his vehicle. At 4:07 P.M., Officer Adams apprehended the Defendant three blocks east of Audubon at 3926 North Bolton. (*Id.*) Although it is unclear at what exact time Officer Carrier left the Audubon scene, he testified that he retrieved his car and drove to North Bolton where Officer Adams was detaining the Defendant. The CAD report indicates that Officer Carrier requested a license plate check for the Vehicle at 4:12 P.M. (*Id.*) In any case, Officer Carrier soon arrived at North Bolton and attempted, with Officer Adams, to verify the Defendant's identity. The Defendant initially identified himself as Terry Hill, born on July 24, 1967. When Officers Carrier and Adams could not confirm the Defendant's identity, they placed him in the back of Officer Carrier's squad car. The officers never advised the Defendant of his *Miranda* rights. However, the only questions they asked related to his identity (name and date of birth).

At 4:41 P.M., Officer Carrier transported the Defendant to the intersection at 21st Street and Arlington Avenue to wait for the police wagon to arrive and take the

[3] The Computer Aided Dispatch ("CAD") report indicates that over the radio Officer Carrier described the suspect as wearing a blue shirt (Def. Ex. C); however, Officer Carrier testified at the hearing that he recalled the Defendant wearing a checkered shirt. In addition, Officer Carrier testified that the suspect attempted to take off the shirt during the pursuit (although the testimony is not clear as to whether he succeeded in removing the shirt). The court views this minor inconsistency as largely irrelevant in determining the merits of the current motion.

Defendant. (*Id.*) The officers testified that, during the ride to 21st and Arlington, the Defendant provided the officers with his true identity and also made statements to the effect that he was sorry and that he could not return to prison. According to the officers, the Defendant's statements were freely given without the officers' solicitation.

Meanwhile, Officer Hayes was the first to return back to the Audubon scene where the Vehicle remained parked in the private driveway at 3831 North Audubon. Officer Hayes testified that he went to the Audubon address to secure Officer Carrier's vehicle. In fact, he testified that Officer Carrier's car was at the Audubon scene when he arrived. However, it appears from Officer Carrier's testimony that at some point in the sequence of events, he retrieved his car and that it was removed from the Audubon location. Officer Hayes was clear in his testimony that he was the only police officer at the Audubon scene upon his arrival but that Officer Carrier's car was parked on Audubon just south of the driveway in which the Vehicle was parked. There is no reason to doubt the credibility of this testimony. Numerous officers arrived at that scene in their police vehicles within a very short period of time. An exciting chase, ending with the apprehension of the Defendant, had just taken place. The inevitable confusion that can result from the occurrence and reporting of such evolving events makes it difficult to be absolute about which car was in a particular location at a certain time. It is plausible that Officer Hayes arrived while Officer Carrier's car was still on Audubon and that Officer Carrier retrieved and moved it while Officer Hayes's attention was focussed on the Oldsmobile Vehicle. It is equally plausible that the police vehicle that Officer Hayes saw actually belonged to one of the other officers who participated in these rapidly

occurring events. Any slight discrepancy about when various officers arrived at and left the Audubon scene are trivial and inconsequential. What is unequivocally true is that Officer Carrier chased the Vehicle to the Audubon location and that Officer Hayes came to that very same Vehicle where Officer Carrier had chased it. Nevertheless, Officer Hayes arrived at the parked Vehicle at 3831 North Audubon at approximately 4:20 P.M. [4] The CAD report indicates that also at 4:20 P.M., Officer Hayes either requested the dispatcher to page another officer, or he was paged by another officer. (*Id.*) At 4:21 P.M., Officer Hayes, although he was not the initiating officer, requested a case number be assigned to the case. (*Id.*) When the initiating officer, in this case Officer Carrier, is preoccupied, it is common practice for another officer to help out by requesting a case number for the case. At 4:24 P.M., Officer Hayes requested a tow truck to tow the Vehicle. (*Id.*)

Officer Hayes testified that upon arriving at the Vehicle parked at 3831 North Audubon, he found that the Vehicle's doors were shut and locked. However, standing outside the Vehicle, he was able to see a black bag on the passenger side seat. Looking through the Vehicle's window, he could see that the bag was open and that it contained guns.

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[4] Although the Defense counsel describes Officer Hayes's ability to find the Vehicle parked at 3831 North Audubon as "miraculous" (because there is no indication of a vehicle description and because Officer Carrier's car was at some point in time no longer at the Audubon scene to mark the location), the court notes that the evidence shows that there was sufficient information available to Officer Hayes to locate the Vehicle. For example, the CAD report marked the starting location near Audubon and 38th Street. (Def. Ex. C.) Likewise, the CAD report also listed the Vehicle's license plate number. (*Id.*) The broadcast of this information would have been more than sufficient to locate the Vehicle.

Officer Miller next arrived at the Vehicle. Officer Miller testified that he knew where to find the Defendant's Vehicle because Officer Carrier had informed him where the chase had begun. Officer Miller found the car with the doors shut and locked. He, too, could see the guns in the open bag on the passenger seat. He indicated that it was necessary to obtain the guns because the car was going to be towed. Officer Hayes used a stick to reach into the car through a partially opened sunroof and unlock the doors.

Officer Lamle next arrived at the Vehicle. When he arrived, the doors remained closed, but now unlocked. He also testified that the guns, in a bag on the passenger seat, were in plain view from outside the car. Before removing the guns from the car, Officer Lamle took pictures of the guns as they sat in the open bag on the passenger seat. (*See* Gov't Exs. 3 & 4.) At 5:02 P.M., Officer Lamle provided a description of four guns found in the Vehicle to the dispatcher.[5] (Def. Ex. C.) This is the first indication on the CAD report that the officers found guns in the Defendant's Vehicle.

The CAD report indicates that Officer Hayes asked that the control center to request a tow truck at 4:24 P.M. (*Id.*) Indy Towing Service received a tow request from the Indianapolis Police Department at 4:42 P.M. Between five to ten minutes later,

[5] The CAD report describes the four guns as "38 SPECIAL 254511 RG . . . BRYCO 22 CAL 969856 . . . LORSEN 9MM 050432 . . . TAURUS 32 CAL DNF02484." (Def. Ex. C.) ATF Agent O'Boyles's probable cause affidavit also describes four guns with the same serial numbers. However, Agent O'Boyles's probable cause affidavit spells the name "Lorcin" differently than the CAD report. The probable cause affidavit also describes the Lorcin as a .380 caliber handgun instead of 9 mm as described in the CAD report, and the Taurus as a .25 caliber handgun instead of a .32 caliber gun. These minor inconsistencies are trivial and inconsequential for purposes of this motion.

Eddie Carney, an employee of Indy Towing Service, arrived at 3831 North Audubon and began towing the Vehicle from the scene. Prior to the Vehicle being towed, the police never attempted to contact Toya (Webb) Cannon, the registered owner of the Vehicle. However, Ms. Cannon testified that she was near the scene. But despite being near the scene, no evidence was introduced that she, or anyone else, for that matter, informed the officers (even when the car was being towed away) that she was the owner of the car.

The residents of 3831 North Audubon never requested that the Vehicle be towed, or that it stay. They never claimed any ownership interest whatsoever in the Vehicle. Officer Hayes testified that he spoke with a resident at 3831 North Audubon when she came out of her house to ask what was going on. However, no officer testified that the resident complained to the officers about the officers' or the Vehicle's presence in the driveway or about the towing of the Vehicle.

The Defendant's version of the incident vastly differs from the officers' versions. The Defendant admits that he had driven the Vehicle to 3831 North Audubon about forty minutes to one hour prior to the incident.[6] However, the Defendant denies driving at the time of the alleged traffic stop.

[6] This testimony is curiously different from testimony that the Defendant gave at a hearing on various discovery motions in this case on January 30, 2006. At the hearing, the Defendant testified that he was not even in the Vehicle on the date of the search. This conflict is not critical in the context of the instant motion, and the court will credit the Defendant's most recent admission that he drove the Vehicle to the location where it was searched.

II. CONCLUSIONS OF LAW

A. The Defendant has Standing to Challenge the Search of the Vehicle and the Seizure of the Handguns

The Government first argues that the Defendant lacks standing to challenge the officers' search of the Vehicle because Toya (Webb) Cannon was the registered owner of the Vehicle. The burden is on the Defendant to present evidence establishing that he has a legitimate expectation of privacy in the area searched. *United States v. Torres*, 32 F.3d 225, 230 (7th Cir. 1994) (citations omitted). When determining whether a defendant has standing to challenge a police officer's search, the Seventh Circuit applies a two-pronged test, "essentially asking whether there is both a subjective and an objective right to privacy." *United States v. Haywood*, 324 F.3d 514, 515-16 (7th Cir. 2003) (citing *United States v. Walker*, 237 F.3d 845, 849 (7th Cir. 2001)).

In order to satisfy the subjective portion of the test, a defendant must show that he "actually and subjectively" held an expectation of privacy. *Torres*, 32 F.3d at 230. Here, the Defendant cannot rely on Officer Carrier's statement that the Defendant was driving the Vehicle at the time of the incident in order to establish standing when, at the same time, he denies the veracity of the statement. Nonetheless, the Defendant need not rely on this statement because he has produced sufficient evidence to establish a subjective expectation of privacy in the Vehicle. While the Vehicle is registered in Ms. Cannon's name, both Ms. Cannon and the Defendant testified that the Defendant helped pay for the Vehicle, that he has his own keys to the Vehicle, and that he has

permission to drive the Vehicle as needed (and regularly did so). In addition, the Defendant testified that he drove the Vehicle to the 3831 North Audubon location an hour before the incident occurred. The testimonies demonstrate that Ms. Cannon shared the Vehicle with the Defendant. As such, the court finds that the Defendant held a subjective and actual expectation of privacy in the Vehicle. *See United States v. Posey*, 663 F.2d 37, 41 (7th Cir. 1981) (finding that driver had an expectation of privacy in vehicle owned by his wife and over which he was exercising exclusive control pursuant to her permission at the time of the search); *United States v. Davis*, 185 F. Supp. 2d 942, 948-49 (S.D. Ill. 2002) (finding standing when the driver was not the registered owner of the vehicle but was purchasing it on installments from the registered owner).

A legitimate objective expectation of privacy is one "which society is prepared to recognize as reasonable." *Torres*, 32 F.3d at 230 (citation omitted). For the same reasons listed above (that the Defendant helped make payments for the Vehicle, possessed his own keys, and regularly drove it with his fiancée's permission), the court likewise finds that the Defendant objectively held a reasonable expectation of privacy in the Vehicle. The Defendant therefore has standing to challenge the officers' search of the Vehicle.

B. The Officers' Search and Seizure did not Violate the Defendant's Fourth Amendment Right to Privacy

A search or seizure without a warrant is per se unreasonable and, thus, in violation of the Fourth Amendment unless the Government shows that the search or seizure "falls within one of a carefully defined set of exceptions." *United States v. Mitchell*, 82 F.3d 146, 151 (7th Cir. 1996) (quoting *Coolidge v. New Hampshire*, 403 U.S. 443, 474-75 (1971)). The Government shoulders the burden of proving by a preponderance of the evidence the applicability of one of these exceptions to validate the search. *See, e.g., United States v. Gravens*, 129 F.3d 974, 980 (7th Cir. 1997) (inevitable discovery rule); *United States v. Longmire*, 761 F.2d 411, 418 (7th Cir. 1985) (*Terry* stop seizure); *United States v. Messino*, 871 F. Supp. 1035, 1040 (N.D. Ill. 1995) (plain view exception); *United States v. Dudley*, 854 F. Supp. 570, 577 (S.D. Ind. 1994) (*Terry* stop seizure; consent search; and inventory search).

First, the Government argues that the officers' search of the Vehicle and seizure of the guns was justified under the plain view doctrine. The plain view doctrine permits a warrantless seizure "when (1) the officer has not violated the Fourth Amendment in arriving at the place from which the evidence could be plainly viewed; (2) the incriminating character of the evidence is 'immediately apparent'; and (3) the officer has a lawful right of access to the object itself." *United States v. Willis*, 37 F.3d 313, 316 (7th Cir. 1994) (quoting *Horton v. California*, 496 U.S. 128, 142 (1990)); *see also United States v. Brown*, 79 F.3d 1499, 1508 (7th Cir. 1996).

The Vehicle was parked in a private driveway at 3831 North Audubon. The Defendant had no ownership interest in the private residence. Yet, the Defendant argues that the officers violated the Fourth Amendment by approaching the Vehicle as it was parked in a private driveway. In other words, the Defendant avers that the guns would not have been in plain view if the officers had not violated the Fourth Amendment by accessing the Vehicle on private property. However, because the Defendant had no ownership or possessory interest in the private residence at 3831 North Audubon, he has no standing to challenge the officers' right to be present on the private driveway.[7] The court therefore finds that the officers did not violate the Fourth Amendment in arriving at the place from which the guns could be plainly viewed.

Next, Officers Lamle, Miller, and Hayes all testified that, from their lawful positions outside the Vehicle, they were able to plainly view the guns in the open bag on the passenger seat. The photographs introduced at the suppression hearing corroborate their uncontradicted testimony about the location and visibility of the bag and guns. (*See* Gov't Exs. 3 & 4.) The court notes that the incriminating nature of

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[7] The Government argues, and the court agrees, that even if the Defendant had standing to make a Fourth Amendment challenge to the officers' presence on the driveway, there was no Fourth Amendment violation because the Defendant had no reasonable expectation of privacy in the open driveway. *United States v. Evans*, 27 F.3d 1219, 1228-29 (7th Cir. 1994) (holding that the FBI agents' approach to a private garage did not implicate a Fourth Amendment interest because the defendant did not present any evidence that he had a reasonable expectation of privacy in the driveway); *see also Katz v. United States*, 389 U.S. 347, 351 (1967) ("What a person knowingly exposes to the public, even in his home or office, is not a subject of Fourth Amendment protection."); *United States v. Ventling*, 678 F.2d 63, 66 (8th Cir. 1982) (no reasonable expectation of privacy in driveway and area around front porch where observations were made in public view); *United States v. Humphries*, 636 F.2d 1172, 1179 (9th Cir. 1980) (where automobile parked in driveway was visible from street and driveway not enclosed, there was no reasonable expectation of privacy that would preclude officer from entering driveway to check on the license plate number of parked car).

handguns viewed in a partially open bag on the passenger seat of car may be apparent in itself. *See Willis*, 37 F.3d at 316 ("We recognize that the incriminating nature of a gun found partially hidden on the forward part of the console underneath the dashboard may be apparent in itself."). Possession of those handguns, however, violates Indiana Code § 35-47-2-1, which prohibits a person from carrying a handgun in a vehicle without a license in the person's possession. Furthermore, it is the Defendant's burden to produce the license. Ind. Code § 35-47-2-24. Absence the production of a valid license for the handguns, which the Defendant did not produce, the presence of handguns in the Vehicle would therefore violate Indiana law. Accordingly, the court finds that the incriminating nature of the handguns was immediately apparent to Officers Lamle, Miller, and Hayes at the time of the seizure.

Because carrying handguns in a car without a license is a crime, the officers would have had probable cause, and thus a legal right, to search the Vehicle and seize the handguns. *See Willis*, 37 F.3d at 316; *United States v. Wilson*, 2 F.3d 226, 232 (7th Cir. 1993). This satisfies the final requirement of the plain view doctrine, that the officers have a legal right of access to the evidence seized. Accordingly, the plain view doctrine applies and justifies the warrantless search and seizure. The Defendant's motion to suppress the evidence of the handguns therefore will be denied.

The search leading to the discovery of the handguns could be legally supported in other ways, also. For example, it is well-established that law enforcement officers may conduct a warrantless search of a vehicle when they have probable cause to believe that the vehicle contains contraband or evidence of a crime. *California v.*

Acevedo, 500 U.S. 705, 717 (1984); *see also Carroll v. United States*, 267 U.S. 132, 153-56 (1925); *United States v. Pittman*, 411 F.3d 813, 817 (7th Cir. 2005); *United States v. Washburn*, 383 F.3d 638, 641 (7th Cir. 2004). This exception is commonly referred to as the automobile exception. Facts here demonstrate that the officers had probable cause to search and seize the handguns. First, upon being pulled over for a minor traffic violation, the Defendant bolted from the Vehicle despite being ordered to stop by Officer Carrier. This demonstrates that the Defendant had strong reasons to evade contact with the police. *See Pittman*, 411 F.3d at 817. Furthermore, as explained above, it is a criminal act to carry handguns in a car without the appropriate license in possession of the Defendant. Ind. Code § 35-47-2-1. Officers Lamle, Miller, and Hayes viewed the handguns in the front passenger seat of the car. Because the Defendant did not produce a license for the handguns, the officers had probable cause to seize the handguns. Thus, the automobile exception likewise justifies the seizure of the handguns.

Finally, if all else fails, the "inevitable discovery" doctrine provides justification for the search. The officers all testified that they seized the handguns during what they subjectively believed was an inventory search prior to towing the vehicle. However, the Government concedes that despite the officers' motives at the time of the search, the search did not constitute a proper inventory search.[8] However, Officers Hayes, Miller,

[8] The Defendant contends that because the officers subjectively believed that they were performing an inventory search, the Government is prohibited from justifying the search by any other means. The officers clearly testified that they conducted the search with the intent of performing an inventory search prior to towing the Vehicle. However, the officers also testified that the handguns were in plain view, which was also a motivating factor in seizing them.

and Lamle all testified that the Indianapolis Police Department has policies and procedures that include towing a vehicle in this situation. Upon towing the vehicle, the officers would have had to perform an inventory search of the vehicle. "Warrantless inventory searches of vehicles are lawful if conducted pursuant to standard police procedures aimed at protecting the owner's property—and protecting the police from the owner's charging them with having stolen, lost, or damaged his property." *Pittman*, 411 F.3d at 817 (citing *South Dakota v. Opperman*, 428 U.S. 364, 372 (1976)). Here, as the Government concedes, the initial search was not an inventory search; however, had the handguns not been seized in the initial search, they would have been seized pursuant to a valid inventory search incident to towing the vehicle. Thus, the inevitable discovery doctrine applies and provides additional justification to the valid search and seizure of the handguns.

Because the search is justified by the plain view doctrine, the automobile exception, and the inevitable discovery doctrine,[9] the officers did not violate the

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Regardless, "[t]he test for the lawfulness of a particular search or seizure is an objective one; the motives of the officer[s] carrying out the search or seizure are irrelevant." *Edmond v. Goldsmith*, 183 F.3d 659, 665 (7th Cir. 1999) (citing *Whren v. United States*, 517 U.S. 806, 811-13 (1996)). It is therefore irrelevant that the officers believed that they were conducting an inventory search. So, the court may look at whether the warrantless search can be justified by any of the other well-defined exceptions.

[9] In its briefing, the Government also argued that the search was justified by the "search incident to lawful arrest" doctrine. The Government appropriately abandoned this argument at the hearing, admitting that the facts of this case would not support the application of the doctrine.

Defendant's Fourth Amendment rights and the Defendant's motion to suppress accordingly will be denied.[10]

[10] In addition to the argument of general Fourth Amendment constitutional principles, the Defendant provides the court with several additional cases that he urges support his motion to suppress the evidence based on an improper search and seizure. The court reviewed these cases (and indeed cites to a couple of them in this opinion), but finds that they do not support the Defendant's motion. The Defendant first points the court to *Colorado v. Bertine*, 479 U.S. 367 (1987). The *Bertine* Court ruled that an officer may inventory the contents of containers found in vehicles taken into police custody and subject to an inventory search. *Bertine* does not apply to this case because the court's ruling is not based on the inventory exception. Next, the Defendant directs the court to *Cady v. Dombrowski*, 413 U.S. 433 (1973). In *Cady*, the Court found constitutional an officer's search of a trunk of a vehicle after the officer had the vehicle towed to a private garage. Again, the facts in *Cady* do not appear to apply to the present case. The Defendant next provides *South Dakota v. Opperman*, 428 U.S. 364 (1976). But *Opperman* states that routine inventory searches of automobiles lawfully impounded by the police are reasonable. Even if there were an inventory search in this case, the court does not see how *Opperman* would help the Defendant. Next, the Defendant points to *Coolidge v. New Hampshire*, 403 U.S. 443 (1971). *Coolidge* sets forth the law regarding search incident to a lawful arrest and the plain view doctrine. Since *Coolidge*, the Court has returned to these doctrines and clarified them on multiple occasions. *See, e.g., Horton v. California*, 496 U.S. 128 (1990). This court's analysis of these doctrines in this ruling follows *Coolidge* as far as *Coolidge* remains good law. The Defendant next cites to *Chimel v. California*, 395 U.S. 752, 763 (1969). *Chimel* discusses the doctrine of a valid search incident to arrest, including limitations on the doctrine. As discussed above, the court rejects any argument attempting to justify the officers' search on the basis of a search incident to arrest. In fact, the Government concedes that the doctrine is not applicable to this case. *Chimel* therefore does not change the outcome in this case. Finally, the Defendant directs the court to two appellate court decisions from outside the Seventh Circuit. The court first notes that while appellate cases from outside the Seventh Circuit can be, at times, persuasive authority, they are never controlling on this court's decision. The court is controlled by, and bases its decision on authority within the Seventh Circuit. *United States v. Edwards*, 242 F.3d 928 (10th Cir. 2001) involves a challenge to the police search of a rental car. The Tenth Circuit ruled that the search incident to arrest exception and inventory exception were not applicable to the facts in *Edwards*. Likewise, in the present case, the court refuses to rely on the search incident to arrest or inventory exceptions. As such, *Edwards* does not influence the court's decision. In *Williams v. Nix*, 700 F.2d 1164 (8th Cir. 1983), the Eighth Circuit held that the police violated the defendant's Sixth Amendment right to counsel and that the inevitable discovery doctrine would not cure the violation. The discussion in *Nix* is inapplicable to the facts here. Furthermore, in citing this case, the Defendant apparently fails to recognize that the Supreme Court granted *certiorari* to review *Nix*. The Court rejected the appellate court's reasoning and reversed the decision. *Nix v. Williams*, 467 U.S. 431 (1984). Needless to say, *Nix* does not aid the Defendant's case either.

III. CONCLUSION

For the foregoing reasons, the Defendant's Motion to Suppress Evidence (Docket No. 67) is **DENIED**.

ALL OF WHICH IS ENTERED this 5th day of April 2006.

John Daniel Tinder, Judge
United States District Court

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